

## INFORME ANUAL DE EE.UU. SOBRE DERECHOS HUMANOS

### PERU

Peru is a multiparty republic that recently emerged from a decade of authoritarian government and is undergoing a process of democratic transformation. In 2001, Alejandro Toledo, of the Peru Posible party won the presidency in elections that observers considered to be generally free and fair. The Constitution provides for an independent judiciary; however, the judiciary widely was considered corrupt and was subject to outside pressure. The Toledo Government continued judicial reform efforts.

The Peruvian National Police (PNP) and the military shared responsibility for internal security; they were under effective civilian control. Members of the security forces committed some serious human rights abuses.

The population was approximately 27.1 million. During the 1990s, economic reforms and privatizations transformed the economy into a market-oriented one. Banking and retail services, agriculture, mining, manufacturing, and fishing were key economic sectors. The Government faced continuing strong social pressures to reduce a poverty rate of 54 percent; 24 percent of the population lived under conditions of extreme poverty. Unemployment and underemployment levels totaled 56 percent, growth was uneven, and the Government lacked revenues for social investment.

The Government generally respected the human rights of its citizens; however, there were serious problems in some areas. There were allegations of unlawful or unwarranted killings by police, and four military recruits died under suspicious circumstances. Police on occasion tortured, beat, and otherwise abused detainees. Prison security forces abused inmates. Torture and abuse of military recruits continued. Impunity remained a problem, and security forces sometimes harassed victims or other witnesses to keep them from filing charges. Overall prison conditions remained poor and were extremely harsh in maximum-security facilities. There continued to be reports of arbitrary arrest and detention. Pretrial detention continued to be prolonged, and trials were frequently subject to inordinate delays. Despite extensive changes to reduce executive influence over the judiciary, problems persisted, including the general inefficiency of the system. There were

accusations of isolated attempts by the Government and other entities to influence the media by threats of legal or judicial action; however, press freedom improved, and greater public attention was focused on the need for a free press. Violence and discrimination against women continued. Violence against children and discrimination against persons with disabilities, indigenous people, and racial and ethnic minorities remained problems. Labor advocates argued that labor laws restricted collective bargaining rights; however, a 2002 law addressed some of these problems. Child labor remained a serious problem in the informal sector. Trafficking in persons was a problem.

The terrorist organization Shining Path (Sendero Luminoso) was responsible for killings and other abuses.

### **RESPECT FOR HUMAN RIGHTS**

#### **Section 1 Respect for the Integrity of the Person, Including Freedom From:**

##### **a. Arbitrary or Unlawful Deprivation of Life**

There were no reports of politically motivated killings by government agents; however, there were allegations of unlawful or unwarranted killings by police. Several of these cases involved the excessive use of force against protesters. Four military recruits died under suspicious circumstances.

On February 22, police in Piura detained Edgar Lopez Sancarranco at the local bus station, where he had gotten into an altercation with a street vendor. Police took the detained man to the local station, where he was beaten and left behind the facility. Lopez's family arrived approximately 1½ hours later, led by Lopez's brother, a police officer, and found Lopez dead. Four police officers were accused of torture. The case went to a judge and was in its instruction phase at year's end.

On May 28, police in Quillabamba detained Julio Alcazar Dolmos, who was brought to the police station, where he gave a deposition regarding family violence with his common law wife, Silvia Campana Becerra. When a police officer looked into the room where Dolmos had been placed, 2 hours later, he saw that Dolmos had fallen to the floor and was strangling, a string from his sweatshirt wrapped around his neck. The police officer attempted first aid. Dolmos was then transferred to a hospital

where he died. The original autopsy indicated that he had committed suicide; however, the large number of bruises and wounds on his body indicated otherwise. At year's end, a judge had ordered the exhumation of Dolmos' body to determine more precisely how he died.

On May 29, soldiers in Puno fired on a group of university students that were protesting the state of emergency declared by President Toledo. One student, Edy Quilca Cruz, died, and 30 others were injured. The lawyer for the deceased argued that the case should be tried in a civilian court; however, the lawyers for the Army stated that it should go to a military tribunal since the soldiers had acted under an executive command to reestablish order. In August, the Prosecutor recommended that the case be tried in a civilian court, and in September, the Supreme Court agreed. Observers contended that this decision reinforced the principle that human rights cases involving the military should be tried in civilian courts and not in military tribunals.

On July 31, Lima police officers conducting a search at a shopping center in La Victoria District shot and killed Leonel Sanchez Rivero. Police, who said they were using warning shots to disperse a crowd that had formed, claimed Rivero had been shot accidentally. The Ombudsman's Office was evaluating the case at year's end.

On November 27, one man was killed during a protest in Junin over electricity privatization, which resulted in a clash with police. Three protesters and six police officers were injured.

Abuse of military recruits remained a problem. In February, the office of the Ombudsman issued a report that stated that 56 recruits had died and 118 had suffered "cruel and humiliating" mistreatment within the Armed Forces between 1998 and 2002. During the year, the press reported several incidents of abuse of military recruits.

On June 26, Corporal Magno Ariza Paitan, a 19-year-old Army recruit, was found hanged in his barracks with marks from blows upon his head. Paitan's mother claimed that her son had complained that various officers had threatened him.

On July 7, recruit Henry Dante Martinez Ayala was found dead from hanging after complaining that army officials beat him without reason. An investigation was underway at year's end.

On August 26, Jhon Lenon Olortegui Perea, a corporal in the Army, was found dead at his guard post in Callao. The Army stated that Leon's death was a suicide; however, his family members doubted this. At year's end, the case was being investigated by the prosecutor's office in Callao.

On September 15, Corporal Freddy Campos Avendano was found dead of a gunshot wound to the head in his barracks at his military base in Chorrillos. The military and police ruled Campos' death a suicide; however, family members alleged that Campos had intended to speak to his superiors about missing munitions at his base, and that there was evidence that he had been beaten before being shot. At year's end, the military was investigating the case, which was also being evaluated by the Ombudsman's Office.

During the year, the Public Ministry began investigating the case of Andy Williams Garces, who disappeared after allegedly being shot during a police surveillance operation in Piura. In early June, the investigation concluded, and a judge accepted the case. On July 24, the prosecutor filed charges against 11 policemen for the disappearance of Garces. A trial was underway at year's end.

There were no new developments in the 2002 case in which three members of a Lima municipal patrol unit and one PNP officer detained and killed Jose Reina Rincon, a bullfighter from Spain. The Human Rights Commission (COMISEDH) was aiding the victims' relatives at year's end.

In February 2002, in San Clemente, Ica, PNP officers fired tear gas canisters at protesters from a hovering police helicopter. One protester died after being hit on the head by a tear gas container. The case was undertaken by the local prosecutor and remained in the first phase of examination at year's end.

In September 2002, police officers from the Canta Comisaria in Lima detained Gerardo Adrianzen Otarola on suspicion of raping a minor. They next day Otarola was found dead in his cell with foam around his mouth, causing suspicion that he had been poisoned or suffocated. At year's end, the case was in the

court system, and an additional charge of torture had been brought against the four police officers involved in the case.

In June 2002, two students in Arequipa, Edgar Pinto Quintanilla and Fernando Talavera Soto, died police-fired gas bombs during protests against the privatization of local electric utilities. In July 2002, William Santos Tuesta was killed in a similar manner in Puerto Maldonado. At year's end, the police officers were on trial charged with manslaughter.

There was no progress in the investigation of the September 2002 killing of Cajamarca department mayoral candidate Joselito Fernandez Perez.

There were no developments in the cases of Juan Carlos Campos Valentin and Graciano Rufino Martinez, who escaped from Challapalca prison and were subsequently killed by prison officers in February 2001.

At year's end, the prosecutor had the case against four police officers and a military lieutenant who, in May 2001, allegedly detained, tortured, and beat Jenard Lee Rivera San Roque, who later died of his injuries.

According to COMISEDH, a prosecutor in Huarochiri was performing a preliminary investigation into the June 2001 case of Nazario Victor Valencia Porras, who died after police took him to the Matucana police station as a robbery suspect.

There were no new developments in the 2001 killings of Guillermo Navarro Rospigliosi by prison guards and Cesar Augusto Ayaucan Argedes by two police officers and a taxi driver.

In October 2001, police in Ica detained Victor Chamorro Cahua on accusations of rape. The following day, he was found dead in the police station in Pancona. The case was recently reported to COMISEDH and was being evaluated at year's end.

There were no developments in the case of Mario Clemente Guillen Mendez. In December 2000, a court in Chincha acquitted five police officers accused of torturing Clemente Guillen to death. The victim's family filed an appeal, and the case went to the Supreme Court in January 2001.

Initial trial proceedings continued in the case of Juan Carlos Aliaga Mera, a former crewmember in former President Alberto Fujimori's presidential plane, who was found dead in the Callao Air Group 8 Complex, in 2000. His body had a bullet wound in the head and, according to the family, showed signs of brutal torture. There were no developments in the case at year's end.

In December, a court declared innocent the police officer accused of killing Nelson Diaz Marcos, who died after police in Tacna arrested him on charges of public intoxication in 2000. COMISEDH appealed the ruling.

A judge in the 2000 alleged murder case of Air Force recruit Jose Luis Poma Payano had not yet ruled at year's end.

The Government is seeking to extradite former President Fujimori from his parents' native Japan, where he fled in 2000, so that he can be tried in court on charges of murder, causing grave injuries, and responsibility for persons who disappeared in relation to the La Cantuta and Barrios Altos killings (see Section 1.b.)

The Government continued to arrest members of La Colina death squad. Since 2001, authorities had arrested 12 members of the group, including the recent detention of Roberto Pichilingue, who had provided logistical support for the group. On November 30, U.S. authorities arrested another member of the La Colina group, Wilmer Yarleque Ordinola, and he was awaiting extradition at year's end. All other former La Colina group members in custody were awaiting trial at year's end.

In an October 15 ruling, a military court dismissed charges of extrajudicial murder against all 120 military commandos who rescued 74 hostages held at the Japanese Ambassador's Residence by members of the Tupac Amaru Revolutionary Movement (MRTA) in April 1997. The court stated that the commandos had followed orders from constitutional authorities in carrying out a military operation against terrorists. In August 2002, the Supreme Court decided that the military court system should have jurisdiction in the case of the commandos. The Court also ruled that four others-- former Intelligence Service Director Vladimiro Montesinos, former Armed Services Chief General Nicolas Hermoza, Colonel Roberto Huaman, and Colonel Jesus Zamudio--were subject to civilian criminal court jurisdiction in

this case. At year's end, Montesinos and Huaman were in custody, while the search for the other suspects continued.

In December 2002, the Inter-American Court of Human Rights ruled that the Government must investigate, try, and sanction those responsible for the 1986 massacre of inmates at El Fronton jail. During the year, the Public Ministry, the only government body with the authority to reopen this case, was investigating whether to bring charges. As part of this investigation, more than 100 human remains were exhumed, and relatives of the dead inmates were given depositions. The matter remained under investigation at year's end.

In December 2002, the Truth and Reconciliation Commission (TRC) issued its first official report, which detailed a massacre where soldiers allegedly tortured and killed eight peasants in Chuschi, near Ayacucho, in May 1980. The report was referred to the Attorney General for further action. In April, a criminal judge in Cangallo opened a trial against two army officers and five police officers for this crime. The Ministry of Defense also opened a trial in military court against the same officers. The matter of jurisdiction remained unresolved at year's end.

The terrorist group Sendero Luminoso continued to commit acts of violence leading to the deaths of civilians as well as military and police officials. Sendero killed eight persons during the year: five members of the police, two ronderos (members of rural peasant self-defense forces), and a community leader in the Huallaga Valley.

#### b. Disappearance

There were no reports of politically motivated disappearances.

Few members of the security forces were held accountable for their role in disappearances during the war against terrorism from 1980-2000, and impunity remained a problem.

In April, PNP Commander Juan Carlos Mejia Leon and PNP officers Antonio Lopez Trujillo, Atanulfo Zamora Garcia, and Victor Eduardo Marquino Alvarado were charged with the kidnapping of Ernesto Rafael Castillo Paez, a student who was detained by the PNP in October 1990 as a suspected terrorist and then disappeared. An investigation was pending at year's end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution and the law prohibit torture and inhuman or humiliating treatment; however, in practice, security forces continued to torture and abuse persons. Abuse of individuals in police custody and inmates in prison by security forces continued to be a problem, as did torture and abuse of military recruits. Impunity was a problem, and the authorities that committed abuses seldom were held responsible.

Torture most often occurred immediately following arrest. Torture was common during police detention when families were prohibited from visiting suspects being held incommunicado and when attorneys had only limited access (see Section 1.d.). During the year, there were two cases of suspects dying following torture or beatings by security officials (see Section 1.a.).

In some cases, police and security forces threatened or harassed victims, their relatives, and witnesses in an attempt to keep them from filing charges of human rights violations. According to Amnesty International (AI) and COMISEDH, several victims were too frightened to follow through with judicial proceedings against their abusers, who subsequently were released without being charged. COMISEDH reported 10 cases of aggravated torture by security forces, compared with 8 in 2002 and 36 in 2001.

On January 23, Lima police from the Apolo Police Station shot Carlos Danilo Echenique Quevedo in the abdomen as they were attempting to disperse a crowd. Police officers reportedly offered to settle with the victim out of court, paying him approximately \$300 (1,050 soles). The Ombudsman's Office was evaluating the case at year's end.

On February 1, prison guards at the Chimbote Prison in Ancash searched inmate Wilder Escobedo Contreras' cell for forbidden articles. Eight guards reportedly handcuffed him, and beat him severely, including stepping on his head. The prosecutor was conducting a preliminary investigation at year's end.

On April 16, Lima police detained John Paolo Alvino Ricalde on suspicion of robbery. Police stated that Alvino, an 18-year-old mentally disabled person, confessed to the crime, but COMISEDH



alleged that Alvino had been beaten. The Ombudsman's Office was evaluating the case at year's end.

On May 12, prison guards at the Chimbote Prison in Ancash took inmate Richard Coronado Calderon from his cell, bashed his head to the ground, and kicked him in the ribs, allegedly for being too boisterous. The Prosecutor was conducting a preliminary investigation into the case at year's end.

On June 13, police officers from Piura detained six ronderos (community self-defense groups), who were allegedly accused of torture. Police reportedly transferred the ronderos to Chiclayo where they were subject to torture, including electrical shocks.

On September 24, in Challapalca Prison in Tacna, several guards allegedly took Miguel Angel Vela del Aguila, a prisoner serving a 20-year sentence for terrorism, from his cell and beat and tortured him for 2 days. He was held in the prison's hospital clinic for 8 days before being returned to his cell.

In January 2002, 20 police officers from the Cotabambas Police Station tortured 19-year-old Renzo Vega Hidalgo. Vega had resisted arrest, and police beat him with a stick; he lost an eye as a result. The prosecutor filed formal charges against the police officers based on serious injuries and abuse of authority. COMISEDH was following the case and asked that the accusation of torture be added. The case continued at year's end.

In August 2002, police officers in Callao arrested Omar de la Cruz for alleged involvement in a robbery. After giving his statement, several police allegedly tortured him using rubber batons. COMISEDH reported that the victim's family refused legal assistance due to fear of retaliation. During the year, the victim's family decided to drop the case.

In November 2002, police in Chaclacayo detained Jair Martin Rodriguez and his brother after a series of fights in and around their home. Six police officers allegedly beat Rodriguez when he resisted being put into a cell. Rodriguez required surgery to repair damage to a finger. The Prosecutor charged the police officers with torture, and the trial continued at year's end.

In March 2002, six prison guards at the Chimbote Prison in Ancash separated inmate Alfonso Valle Oquendo from other

prisoners during a morning activity and beat him brutally. The prosecutor had not submitted a formal accusation of "abuse of authority" against the prison officials responsible. At year's end, the trial continued.

The Congressional Permanent Committee heard from a subcommittee that investigated the 2000 torture of journalist Fabian Salazar. The committee discovered that Salazar possessed incriminating materials that would have damaged then-President Fujimori's chances at reelection. Fujimori ordered the retrieval of the materials. Salazar was then tortured. The committee recommended that Fujimori be charged in this case.

NGOs and the Human Rights Ombudsman continued to receive complaints that the military beat or otherwise mistreated some members of the military service. Mistreatment of military recruits continued to be a problem. There were four reported incidents in which military recruits died under suspicious circumstances (see Section 1.a.).

In January 2002, in Andahuaylas, a superior officer allegedly beat Freddy Cardenas Maucaylle in punishment for poor performance during a firing range exercise. The Ombudsman's Office was evaluating the case at year's end.

In July 2002, three superior officers allegedly drugged and sexually assaulted soldier Rolando Quispe Berrocal in an Ayacucho barracks. The three soldiers were charged with torture, and the trial went to criminal court. The officers responsible for the military headquarters also were accused of obstruction of justice. The Prosecutor's Office requested an extension to carry out further investigation at year's end.

In October 2002, in Piura, a superior officer allegedly kicked and beat soldier Noe Moises Canales Salazar unconscious after finding him sleeping during guard duty. Canales was released from military service, and the case was still pending in the Superior Court at year's end.

The authorities concluded an investigation in the 2001 case of Frank Alfredo Romero Arrieta, a military recruit who was beaten by officers and left with serious spinal cord damage that impeded his ability to walk; five officers were charged with torture. The case was pending at the Prosecutor's Office at year's end.

Citizens at times took the law into their own hands, meting out severe physical punishment to persons committing offenses such as robbery, burglary, rape, and child molestation.

Conditions were poor to extremely harsh in all prison facilities. The National Prison Institute controlled most of the facilities. The National Police ran the largest prisons, such as Lurigancho and Miguel Castro Castro. Conditions were especially harsh in maximum-security facilities located at high altitudes. Low budgets, severe overcrowding, lack of sanitation, and poor nutrition and health care were serious problems. Prison guards and fellow inmates routinely victimized prisoners.

There were no reports of security forces killing inmates during the year; however, human rights observers who monitored prison activity reported that torture and ill treatment of prisoners by security forces occurred. Corruption was a serious problem among poorly paid prison guards, many of whom engaged in sexual abuse, blackmail, extortion, narcotics trafficking, and the acceptance of bribes in exchange for favors that ranged from providing a mattress to arranging an escape. Since prison authorities did not supply adequate bedding and budgeted only approximately \$0.70 (2.70 soles) per prisoner per day for food, the families of prisoners typically had to provide for these basic needs.

Overcrowding and inadequate infrastructure hampered efforts to improve prison living conditions. The 81 prisons and detention facilities held approximately 29,000 prisoners at year's end. At Lima's San Juan de Lurigancho men's prison, the country's largest, more than 7,000 prisoners lived in a facility built to accommodate 1,500. Inmates in all prisons had only intermittent access to running water; bathing facilities were inadequate; kitchen facilities remained generally unhygienic; and prisoners slept in hallways and common areas due to lack of cell space. Illegal drugs were abundant in many prisons, and tuberculosis and HIV/AIDS were reportedly at near-epidemic levels.

At year's end, 65 percent of all prisoners had not been sentenced (see Section 1.d.). Pretrial detainees were held together with convicted prisoners in most cases. Detainees held temporarily while awaiting arraignment in Lima were not provided with food. This temporary detention period lasted from a few

hours up to 3 days. The detainees were not allowed outside for fresh air and had restricted access to bathrooms.

In the Women's Prison in Lima, approximately 80 percent of the prisoners were detainees who had not been sentenced. If prisoners are held more than 18 months (or 36 months in more complex cases) without being sentenced, they are released.

The International Committee of the Red Cross (ICRC) reported a shortage of trained medical personnel, unreliable and insufficient legal representation for prisoners, an insufficient number of social workers and psychologists, and a general lack of organization in prison administration.

According to human rights monitors, the Challapalca prison in Tarata, Tacna, seriously violated international norms and standards, particularly as a result of its isolation and high altitude. Located at 14,000 feet, Challapalca's freezing temperatures and oxygen-thin air had unavoidably detrimental effects on prisoner health. The prison could be reached only after an all-night bus ride from the nearest population center, limiting inmates' contact with family. Despite continued pressure from national and international human rights groups, Challapalca remained in operation.

Male and female prisoners were housed separately. In high-security prisons, female inmates were allowed to see their children once a week. In women's prisons, children 3 years of age and younger lived with their jailed mothers. There were also separate juvenile facilities, in which conditions were not as harsh as those in adult prisons.

The Government permitted prison visits by independent human rights observers, including the ICRC. Members of the Ombudsman's office visited the naval facility in Callao for the first time in 2000 and have continued since then. At year's end, the ICRC had made 84 unannounced visits to inmates in 37 different prisons, detention centers, and juvenile detention facilities.

#### d. Arbitrary Arrest, Detention, or Exile

The Constitution, Criminal Code, and antiterrorist statutes delineate the arrest and detention process. The Constitution requires a written judicial warrant for an arrest unless the

perpetrator of a crime is caught in the act. Judges must control the actions or detentions carried out by authorities, and only judges can authorize detentions, including in corruption cases. However, the Organic Law of the National Police permits the police to detain a person for any investigative purpose. Authorities are supposed to arraign arrested persons within 24 hours. In cases of terrorism, drug trafficking, or espionage, arraignment must take place within 30 days. Military authorities must turn over persons they detain to the police within 24 hours; in remote areas, this must be accomplished as soon as practicable. In the past, these statutes have been abused.

The PNP are responsible for all areas of law enforcement in the country. They function under the authority of the Minister of the Interior, a presidentially appointed cabinet-level position. The personnel structure follows that of the military, with an officer corps and enlisted personnel. The organizational structure is a hybrid of directorates that specialize in specific areas (kidnapping, counter-narcotics, terrorism, etc.) and local police units. While each department, province, city, and town has a PNP presence, size varied with the population of the given area and its level of criminal activity.

The PNP's effectiveness against common criminal activity was considered low. With the exception of some special units, the PNP had deficits in professionalism. Corruption, impunity, and abuse of detainees were problems (see Sections 1.a. and 1.c.).

Over the last year, the Interior Ministry and the PNP undertook reform efforts. In August, the PNP formed the Green Squad, a special unit to fight street crime. This unit carried out several high-profile, successful raids against clandestine brothels in the fall. Since 2002, the Ministry attempted to dismiss 189 police officers for bad performance, including, in some cases, alleged criminal activity. In October, the courts compelled the Ministry to reinstate the 189 officers, stating that dismissal following previous administrative punishment constituted a form of double jeopardy. At year's end, the Ministry was considering modifications to rules that govern police discipline that would both ensure the constitutional rights of officers and also give the Ministry the flexibility to separate corrupt or even criminal police officials from the force.

In February, Congress passed a series of laws to address the problem of arbitrary detention and to enhance citizen security. One law regulates police powers during criminal investigations and states that police must report to the Public Ministry within 24 hours whenever a suspect is arrested when caught in a criminal act. The Public Ministry, in turn, must issue a report assessing the legality of the police actions. The police appeared to be reporting promptly to the Public Ministry; however, problems occurred because of delayed responses from the Ministry.

Police abuse of detainees was a problem; however, reports of such abuse declined during the year. Abuse usually took place at the police station just after the arrest, while the detainee was held incommunicado (see Section 1.c.). A 2000 law allows the authorities to detain suspects in investigations for corruption for up to 15 days without arraignment. The law also permits authorities to prohibit suspects under investigation for corruption from traveling abroad. Police may detain terrorist suspects for a maximum of 15 days and hold them incommunicado for the first 10 days.

During the year, the specialized terrorism chamber of the Superior Court nullified all cases dealing with terrorism and treason, including military tribunal cases. New case proceedings were initiated by this chamber in accordance with decisions of the Inter-American Court of Human Rights and of the Constitutional Tribunal. The crime of treason no longer exists. Among the prisoners affected by this ruling was Sendero Luminoso leader Abimael Guzman. Guzman's conviction to a life sentence by a military tribunal in 1992 was overturned in March. That same month, Pablo Talavera, president of the Anti-Terrorist Superior Court, announced that Guzman would receive a new trial in a civilian court scheduled for 2004.

Many detention orders remained pending against approximately 4,000 persons allegedly forced to join terrorist groups; however, in May 2001, Congress passed a law that allowed the detention orders to be changed to summonses to appear in court if requested by the person named in the order. Legal experts and NGOs reported that the law was not effective, and fewer than 50 individuals had appeared before the court to make the request, reportedly because they were distrustful of the judicial process and feared arrest. The TRC recommended providing legal assistance to those people against whom

erroneous detention orders are pending. The judiciary acknowledged this situation, but lacked resources to launch a program. The Institute of Legal Defense initiated a study of these cases. It reviewed almost 4,411 cases in coordination with the ICRC and the specialized terrorism chamber of the Superior Court of Lima. It recommended the removal of these persons from the list because they were already detained, had multiple orders of arrest issued against them, or had already been pardoned.

The prison system continued to be plagued by sentencing delays, which the Government sought to address. At year's end, according to National Penitentiary Institute (INPE) statistics, approximately 35 percent of a total prison population of approximately 29,000 was sentenced. During the year, the Ministry of Justice appointed more public defenders to provide legal counsel to inmates in six penitentiary centers located in Lima, Trujillo, Huanuco, Ayacucho, and Ucayali. The number of lawyers available to 7,000 inmates at Lurigancho prison, for example, was increased from 3 to 22. In September, the Executive Council of the Judiciary issued a resolution that provides for 14 administrative measures to be adopted by judges nationwide in handling penal cases. These measures, which provide for the use of oral proceedings, were aimed at improving the efficiency of case handling and streamlining procedures. Finally, a program to assist the judiciary in reducing the case backlog and developing an inventory of the pending cases was expected to focus on those courts that handle cases involving inmates without sentences.

According to the INPE, the elapsed time between arrest and trial in civil, criminal, and terrorism cases averaged between 26 and 36 months, during which time suspects remained in detention. Once trials concluded, prisoners often had to wait long periods before being sentenced.

Many individuals associated with the Fujimori administration were the targets of criminal investigations. Anticorruption legislation enacted in 2000 gave judicial authorities expanded powers. Many of those detained under these laws complained that the cases against them were politically motivated. Government sources replied that, given the scale of the scandals of the Fujimori era, the Government had no choice but to create new prosecutor and judge positions dedicated to those cases. At the same time, the investigations carried out followed the same

rules as any other. Defendants had full access to attorneys, and the investigations against them followed all the norms of due process.

The Constitution does not permit forced exile, and the Government did not use it in practice.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, as an institution, the judiciary was still recovering from the effects of 8 years (1992-2000) of intensive manipulation by the executive branch under the Fujimori administration. The judiciary operated independently of the executive, although President Toledo expressed strong concern about judicial decisions dismissing charges of human rights violations and corruption against members of the former Fujimori government. Congress, the media, and the public criticized judges for controversial decisions, including those favoring members of the previous government. Polls consistently showed that the judiciary enjoyed the least public confidence of any governmental institutions; corruption and inefficiency were major public concerns.

The 4-tier court structure consists of lower and superior courts, a Supreme Court of 30 judges, and a Constitutional Tribunal of 7 members. In 2000, Congress restored the powers of the independent National Magistrates Council (CNM) to appoint, discipline, and evaluate all judges and prosecutors who have served in their position for 7 years or more. Failure to be certified disqualified a judge or prosecutor from ever working in that capacity again. Several of the more than 100 judicial officials failing to gain certification filed complaints with the IACHR that this certification process was unfair. In October, the IACHR held a hearing during which the Government argued that the certification process was fair, while the National Human Rights Coordinating Group, an umbrella group of human rights organizations, took the opposite view. Subsequently, the Constitutional Court found against the litigants, stating that the process had been fair.

Judicial reform continued to be a priority of the Government. President Toledo expressed strong concerns about the pace and results of the modernization process initiated by the judiciary; no tangible results were felt by the public.



In October 2002, Congress created a Special Commission for the Integral Reform of the Administration of Justice. Its members include the Attorney General, the president of the National Council of the Judiciary, a representative of the Constitutional Tribunal, the president of the Judicial Academy, the Minister of Justice, the Ombudsman, two representatives of the Justice and Human Rights Commission of Congress, and five representatives of those civil institutions that are participating in the National Accord. The Commission was supposed to submit a national plan for the integral reform of the judiciary within 180 days of its installation.

Under former President Fujimori, the executive branch pressured provisional judges and prosecutors, as their employment contracts could be canceled without cause. Subsequent investigations showed that former intelligence advisor Montesinos improperly influenced numerous judges. The majority of officials so implicated either resigned or were suspended. During the year, the CNM worked to address this problem and it carried out over five reviews of judges and prosecutors. As a consequence, the number of provisional judges and prosecutors was reduced to 45 percent, and the percentage of provisional prosecutors fell to 53.2 percent.

The justice system is based on the Napoleonic Code. In civilian courts, criminal cases moved through three distinct phases. First, a prosecutor investigated cases and submitted an opinion to a first instance judge, who determined whether there was sufficient evidence to open legal proceedings. If there was, the judge conducted an investigation and, in over 90 percent of cases, determined facts, guilt or innocence, and issued a sentence. In some cases, particularly those involving violence or public officials, the law requires that the first instance judge pass the results of the investigation to the superior court for an oral trial before a three-judge panel. Anyone convicted and sentenced by a first instance judge may appeal to the Superior Court up to the Supreme Court. All defendants had the right to be present at their trial. Defendants also had the right to counsel, although the public defender system often failed to provide indigent defendants with qualified attorneys.

There was a presumption of innocence, defendants could call witnesses, and there was a system of bail. Attorneys had unimpeded access to their clients.

Under the military justice system, judges in the lower courts had the power to sentence and were required to pass judgment within 10 days of a trial's opening. Defendants could then appeal their convictions to the Superior Military Council, which had 10 days to make its decision. A final appeal may be made to the Supreme Council of Military Justice, which must issue its ruling within 5 days. At the Superior Military Council and Supreme Council levels, a significant number of judges were active-duty officers with little or no professional legal training. Although military judges no longer try civilians, Human Rights NGOs, the Ombudsman, and the TRC all called for military justice reform.

When it resumed its mandate in 2000, one of the first acts of the Constitutional Tribunal was to remove jurisdiction over civilians accused of terrorism by military courts. By 2001, civilian courts were processing the cases of 152 of the approximately 600 civilians tried in military courts under the aggravated terrorism law, which equates terrorism with treason. On January 3, the Constitutional Tribunal ruled that many of the provisions of the anti-terrorism decree laws promulgated by former President Fujimori and used as the legal basis for convicting and sentencing to lengthy prison terms Sendero Luminoso and MRTA terrorists were unconstitutional. While convicted terrorists were not to be released as a result of this decision, approximately 900 became eligible for new trials in civilian criminal courts. The Constitutional Tribunal's ruling gave the Government "a reasonable period of time" to elaborate mechanisms for these new trials. In February, President Toledo decreed a new law that elaborated procedures to be followed in the new trials. One main provision was that evidence legally gathered in the old trial proceedings could be used in the new trials. On March 7, President Pablo Talavera of the special terrorism chamber of the Superior Court announced that there were 2,500 terrorism cases that would have to be reviewed because those convicted had been sentenced by "faceless judges." At year's end, 1,139 such cases remained to be examined.

In late 2000, the Government established a new Pardons Commission, which released 32 persons from prison during the year. NGOs advocated that the new Commission expand its review to include all convictions and sentences rendered by military courts. During the year, the Commission studied approximately 150 cases. At year's end, the Commission had reviewed 60 cases,

another 60 were sent back to the judiciary for a new trial, and 30 were pending review.

In June 2001, a civilian court found U.S. citizen Lori Berenson guilty of collaboration with the MRTA terrorist group and sentenced her to 20 years in prison. Berenson's appeal to the Supreme Court was unsuccessful, but the IACHR determined that Berenson had not been given a fair trial. In July 2002, the Government took the matter to the Inter-American Court. There was no indication when the Court might rule on the appeal.

In 2001, the Inter-American Court provided the Ministry of Justice a clarification of its 1999 ruling that two 1995 amnesty laws were incompatible with the American Convention on Human Rights. These exempted military officials from prosecution and were used to protect officers accused of the 1991 Barrios Altos massacre. Former intelligence adviser Montesinos faced more than 60 trials. In March, Montesinos was found guilty of influence peddling and sentenced to 5 years in prison. Montesinos still faced other more serious charges, including money laundering, corruption, human rights abuses, and murder. In addition to Montesinos, the Government planned to bring other members of the security forces to justice in other human rights abuse cases (see Section 1.a.).

In June 1999, the Inter-American Court of Human Rights ruled against the Government in the case of four Chileans convicted of treason by a military tribunal and sentenced to life in prison. The Court found that the military had denied the defendants due process rights and ruled that a civilian court should have had jurisdiction. In May 2001, the Supreme Council of the Military Court invalidated an earlier military court decision against providing new trials and ordered new, civilian trials for the four Chileans. On September 2, the specialized terrorism chamber of the Superior Court sentenced all four to prison terms of between 15 and 23 years.

There were no reports of political prisoners. Sendero Luminoso and MRTA members charged with or serving sentences for terrorism were not considered to be political prisoners.

f. Arbitrary Interference with Privacy, Family, Home or Correspondence

The Constitution requires security forces to have a written judicial warrant to enter a private dwelling; however, there were reports that the authorities did not always observe this requirement in practice.

The Constitution provides for privacy of communication. There were few complaints that the Government violated this right.

There was no progress in the case of former army intelligence (SIE) agent Luisa Margarita Zanatta Muedas, who fled the country in 1998 after allegedly providing information regarding SIE wiretapping operations. She was charged with disobedience and being absent without permission. In 1999, the Human Rights Ombudsman recommended that the Government pardon Zanatta, that the Public Ministry investigate the wiretapping, and that Congress broaden the investigation conducted by its committee on defense. Zanatta's case was still under investigation and scheduled to be tried in a military court at year's end.

In April 2002, Congress passed a new wiretapping law that expanded the scope of officials who are authorized to request wiretapping permits to the attorney general, district attorneys, and case prosecutors. A judge must approve each request. The Government contended that the new law should aid in fighting organized crime, but opponents protested that it lends itself to civil rights violations (see Section 2.a.).

A 2000 law makes military service voluntary and prohibits forced conscription. Registration for military service remains obligatory for men aged 18 and older. The President retains the authority to decree the reestablishment of mandatory service. Since past efforts to prohibit forced conscription failed, the Human Rights Ombudsman monitored the law's implementation. As of October 2002, the Ombudsman's office had received eight complaints of forced conscription.

There were also reports that some young men from poor, rural areas were taken into military service when they went to register; they were unaware that military service was no longer mandatory. Also, in some rural areas, families reported to human rights NGOs that their sons were taken into the military before they turned 18. According to NGOs, the military explained this by saying that young men who were eager to join their ranks sometimes lied about their age.

There were no reports of forced conscription by the MRTA (most of whose surviving members were jailed). Sendero Luminoso, however, continued to coerce indigenous persons to join its ranks (see Section 5).

Acting on allegations that more than 300,000 women were forcibly sterilized between 1995 and 2000 under the Fujimori administration, in October 2001, Congress directed the Commission on Health to investigate the voluntary surgical sterilization program. Earlier investigations of the allegations found that primarily during 1996-97, health workers in public hospitals and family planning clinics administered by the Ministry of Health had induced female patients to opt for sterilization by promising them food or other goods or services, or by not providing them with complete information about available alternatives. The IACHR took up the cases of 200 women sterilized under the Fujimori-era program and recommended that they receive compensation. On August 26, the Government made the first such payment to the family of a woman, Maria Mamerita Mestanza Chavez, who died in 1998 during a sterilization procedure. Mestanza's husband and seven children received \$10,000 (35,000 soles) each and a promise that those who had induced her to undergo her fatal sterilization would be investigated and, if appropriate, prosecuted. Other such cases were being considered at year's end.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected this right in practice; however, some problems remained. During the year, the Government generally tolerated criticism and did not seek to restrict press freedoms. There were, however, accusations of harassment, attacks on journalists, and threats of judicial sanctions. Alleged harassment came from a variety of sources, including the Government, political activists, and cocalero groups.

The press represented a wide spectrum of opinions, including those in favor of and in opposition to the Government. In the greater Lima area, there were 25 daily newspapers, 7 television stations, 65 radio stations, and 2 news channels on 2 commercial cable systems. There were numerous small provincial newspapers,

television and radio stations. All were privately owned except for one government-owned daily newspaper, one government-owned television network, and two government-owned radio stations, none of which enjoyed a particularly large audience, although the television network covered the nation.

Several media executives remained jailed pending sentencing for corruption charges stemming from media manipulation during the Fujimori regime.

On December 12, Chief Prosecutor Pablo Sanchez requested that Samuel and Mendel Winter (two minority shareholders of TV Channel 2) receive 6 years in prison and that Francisco and Jose Crousillat (Channel 4) receive 8 years. At the end of the year, the anti-corruption judges were considering whether or not to apply these punishments.

Although citizenship was restored to Channel 2 majority shareholder Baruch Ivcher, and a Government-named arbitration tribunal had been created to offer him compensation for the violation of his rights to nationality, ownership, due process, and freedom of expression, at year's end, no compensation had been paid.

On December 11, a court in Lima opened a new case against Ivcher. He was accused of having altered the financial records for Channel 2 to benefit one of his daughters. At year's end, Ivcher's lawyer was protesting the action to the Inter-American Court. The court in Lima argued that while other accusations against Ivcher had been dropped, the financial case against him remained.

In February, a judge in San Francisco, Ayacucho, ordered the arrest of Nelson Palomino for "defense of terrorism," abduction, disturbing the peace, damaging public property, and organizing a group for the purpose of disturbing public order. Palomino, a coca grower leader and the owner of Kimbiri's "Double A" radio station in Cusco, advocated violent resistance to the eradication of illegal coca.

On January 28, the Superior Court of Callao freed Eduardo Calmell, the former director of Expreso. Callao subsequently fled the country. The corruption case against him continued in his absence.

On February 25, a Lima justice of peace granted Genaro Delgado the administration of TV Channel 5, suspending the share rights of Ernesto Schutz Sr. Schutz was a fugitive in Argentina pending extradition to Peru on corruption charges relating to manipulation of the media during the Fujimori Government. Throughout the year, Delgado sought to regain control of Channel 5 through the courts, arguing that he was the majority stockholder and the judicial administrator. After contradictory judicial resolutions, Delgado regained control of Channel 5 in August, although Schutz controlled some of the station's facilities. The followers of both sides clashed occasionally, as one side tried to dislodge the other, causing the police to deploy. Schutz's case remained pending in court at year's end.

On May 8, the Criminal Section of the Supreme Court issued two resolutions in response to complaints from Alex and Moises Wolfenson, the publishers of pro-Fujimori tabloid El Chino and of opposition daily La Razon, who had been under house arrest on corruption charges since May 2002. These resolutions allowed the detainees to work from their homes, though they remained under house arrest.

On May 27, the Anti-Corruption Superior Court fined Gente magazine publisher Enrique Escardo \$4,000 (14,000 soles) for his links with Fujimori's corruption network. In September, the court admitted a district attorney's request to try the Gente publisher for taking bribes from Montesinos and, in return, offering public support for the Fujimori government's 1996 decision to withdraw Baruch Ivcher's citizenship.

On June 25, the daughter of Nestor Puicon, the director of news program "Radio News" at Huancaayo's Señorial radio station, was kidnapped. During the negotiations for her release, Puicon was told to stop criticizing the local government administration.

On July 23, Eduardo Bruce, head of the Peruvian Radio and Television Institute, the entity that administers the state media, suspended reporter David Barturen from reporting from Congress for using inappropriate language. Barturen was a reporter with government-owned TV Channel 7. He had recently published an interview in which a pro-government Congressman publicly contradicted another Congressman.

On August 18, Cesar Hildebrandt, the director of TV Channel 2's program "In the Wolf's Mouth," disseminated a clandestine,

recorded audio of a private telephone conversation of President Toledo with one of his advisors. On August 19, Toledo threatened judicial procedures against those who had disseminated the tape. No subsequent action had been taken against any member of the press over this case at year's end.

On September 6, Marco Antonio Vasquez and Diego Fernandez-Stoll, reporters with Channel 2's Sunday political program "The Indiscreet Window," were detained for 3 hours for filming the Attorney General's birthday party in a public restaurant, where the reporters entered with an invitation. Their film was seized.

On September 14, journalist Cecilia Valenzuela reported that the Chief of the National Intelligence Council (CNI), Admiral Alfonso Panizo, had put into effect a plan to surveil journalists working on television program "The Indiscreet Window." On September 16, Panizo admitted that the journalists had been monitored and met with the Peruvian National Press Council to discuss the problem. The council rejected Panizo's explanations, saying that his actions had set a potentially harmful precedent. Panizo was forced to resign his post on September 17, and President Toledo announced that the CNI would be reorganized in the wake of the scandal.

On October 24, the Ministry of Transportation and Communications suspended the concession of Antartica Investments, the company that managed Mundovision (cable channel 75), which broadcast a program by television journalist Nicolas Lucar. Mundovision representatives claimed that the Government was punishing Lucar and Mundovision for Lucar's role in reporting the story of President Toledo's illegitimate daughter. The Ministry replied that the decision was a technical one, that Antartica had not filed the proper documents for its concession, but that it could reapply.

On December 12, journalist Rosa Maria Palacios announced that a security firm she hired had found a listening device attached to the telephone line in front of her house. At year's end, the source of the device still had not been determined. On December 18, the prosecutor in Lima opened a preliminary investigation against those who planted the listening equipment outside Palacios' residence.



On December 14, in Chimbote in Ancash, three militants from the American Popular Revolutionary Alliance (APRA) party abused reporter Edwin Azana Alejos from Channel 31. At the time, Alejos was covering internal APRA elections in Ancash.

In October, Vicente Silva, the chairman of TV Channel 10, was released, having been accused of acting as the intermediary for Vladimiro Montesinos in the latter's attempt to purchase Channel 10 for the Ministry of Defense. At year's end, several television executives were fugitives from justice, including the former major shareholder and the chairman of TV Channel 4, Jose Enrique and Jose Francisco Crousillat, the major shareholder of TV Channel 5, Ernesto Schutz, and the chairman of the board of Channel 9, Julio Vera.

One reporter, Juan de la Matta, accused of terrorism by the Fujimori government, was still in prison at year's end. Another reporter jailed on similar charges, Javier Tuamana, had his sentence commuted by a judge and was released in December 2002.

Some journalists and media outlets were reportedly intimidated during the year. According to the National Journalists Association, there were 42 cases of harassment of journalists during the year, compared with 78 in 2002. The majority of these incidents took the form of threats of violence; threats of judicial proceedings; and charges of slander from local politicians, police, military officials, or businessmen. A variety of sources, including local officials, coca producers (cocaleros), and unknown parties, were responsible for the incidents.

The Government did not formally censor the media, books, publications, films, or plays.

The Government did not limit access to the Internet.

The Government did not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the authorities generally respected this right in practice. The police used tear gas and occasionally force to disperse protesters in various demonstrations during the year. The law does not require a permit for a public demonstration; however,

organizers must inform the Ministry of Interior's political authority (Prefect) about the kind of demonstration and its location. Demonstrations could be prohibited for reasons of public safety or health. Municipal authorities routinely granted permission for demonstrations.

Although most demonstrations were peaceful during the year, protests in Ayacucho, Aguatia, and other areas turned violent.

On February 24, in Aguatia, police used tear gas to control a violent protest by cocaleros; 40 protesters were injured during the clash with police, and 15 were arrested. There were similar protests in other coca growing areas to pressure the Government to end coca eradication programs. On April 8, 20 farmers and 4 police officers were injured in Ayacucho during a confrontation between the 2 groups. Police used tear gas to disperse the crowd of approximately 300 cocaleros, who blocked roads and threw stones at buses, injuring passengers.

On November 20, police used force and tear gas to break up a demonstration in front of the Palace of Government by approximately 150 adolescents and children, who worked as bootblacks and sold items on the street. Four organizations representing the youth workers called for the protest to mark the anniversary of the U.N. Declaration of the Rights of the Child. Police sources said that the protest took place in a restricted area in the historical center of Lima and that the protestors became violent. NGO representatives and press accounts said police attacked the crowd and used excessive force in breaking up the demonstration, causing injuries to a number of participants.

During the year, there were frequent protests by workers asking for higher wages and by disgruntled citizens pressing for various social and economic demands. According to labor advocates, groups were able to express their opinions publicly, and the National Police generally maintained order in a lawful manner. Police occasionally used tear gas against protesters. Police arrested some protesters during the year for violent or destructive offenses.

The Constitution provides for freedom of association, and the authorities generally respected this right in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, the Catholic Church received preferential treatment from the State. The Constitution establishes the separation of church and state, but also acknowledges the Catholic Church's role as "an important element in the historical, cultural, and moral development of the nation." The Catholic Church and Catholic clergy received extra benefits from the State in education, taxation of personal income, remuneration, and taxation of institutional property. Teaching about Roman Catholicism in primary and secondary schools was mandatory. By law, the military could hire only Catholic clergy as chaplains, and Catholicism is the only recognized religion of military personnel.

All faiths were free to establish places of worship, train clergy, and proselytize. Religious denominations or churches were not required to register with the Government or apply for a license. Conversion from one religion to another was allowed, and missionaries could enter the country and proselytize.

The Freedom of Conscience Institute (PROLIBCO), an NGO that favored strict separation between church and state and opposed the preferential treatment accorded to the Catholic Church, claimed that the Government discriminated against non-Catholic groups by requiring payment of import duties and a sales tax on Bibles brought into the country. In 2001, members of the Jehovah's Witnesses complained that the Government denied them tax exemption for imported Bibles and other religious educational material. In August 2002, a superior court upheld a May 2002 temporary suspension of the surety fees, and the Jehovah's Witnesses did not report any further problems.

During the year, the Ministry of Justice established an Office of Ecclesiastical Affairs designed to be a link between the Ministry and the religious hierarchies of all faiths. Churches were asked to register voluntarily with the Ministry so they could receive tax benefits and exemption from import duties on religious materials. Representatives of PROLIBCO complained, however, that the criteria used for official recognition effectively discriminated against smaller or more recently developing denominations, as well as against indigenous religious beliefs.

The Ministry of Education required Catholic religion courses in all primary schools, public and private. Parents who did not wish their children to participate in the mandatory religion classes had to request an exemption in writing to the school principal. PROLIBCO objected to the requirement to teach the Catholic religion in the public school curriculum, maintaining that this de facto separation of non-Catholic children from their peers was discriminatory against children who could not participate in the full range of school activities. It claimed that the alternatives available to non-Catholic parents violated the constitutional protection of privacy and confidentiality of one's convictions and beliefs. Non-Catholics who wished their children to receive a religious education in their own faith were free to organize such classes at their own expense, during the weekly hour allotted by the school for religious education, but had to supply their own teacher.

PROLIBCO also objected to the favored place that the Catholic Church enjoys in both the Police and the Armed Forces. PROLIBCO supports constitutional change that would eliminate references to the Catholic Church.

For a more detailed discussion, see the 2003 International Religious Freedom Report.

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for the right of free movement; however, the authorities legally may restrict persons with pending criminal and, in some cases, civil charges against them from leaving the country. Police could check travelers at control points throughout the country. There were no other political or legal constraints on foreign travel or emigration. Repatriates, both voluntary and involuntary, were not treated differently from other citizens.

The Constitution prohibits the revocation of citizenship. However, according to the Nationality Law, naturalized citizens may lose their citizenship for, among other reasons, committing crimes against the State, national defense, and public security, as well as for reasons that "affect the public interest and the national interest."

Sendero Luminoso occasionally interrupted the free movement of persons by setting up roadblocks in sections of the Upper Huallaga Valley and the Apurimac and Ene River Valleys.

The law, which was updated in December 2002, provides for the granting of status or asylum to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement and granted refugee status or asylum. The Government cooperated with the U.N. High Commissioner for Refugees in granting refugee status and recognized the Catholic Migration Commission as the official provider of technical assistance to refugees. The commission also advised citizens who feared persecution at home and sought asylum abroad.

As of September 30, the Catholic Migration Commission reported that 106 individuals had requested asylum or refugee status. There were another 78 persons who arrived in the country after 2000 who were still waiting to have their refugee cases decided at year's end.

The Government did not grant asylum status to new arrivals because the Special Commission for Refugees in the Foreign Ministry had not examined cases because it was awaiting the writing of regulations for the new Refugee Law. At year's end, there were 814 refugees in the country.

Refugees can live, work, study, and exercise all fundamental rights limited only by the restrictions levied on all foreigners. Within the country, they are legally protected from reprisals. There were no acts of discrimination recorded against them. If they commit a crime, refugees receive due process. Refugees can apply to change their immigrant status, should they so desire.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides for the right of citizens to change their government peacefully, and citizens exercised this right through free and fair elections.

In 2000, President Valentin Paniagua took power and led a transition government after then-President Alberto Fujimori resigned and was dismissed from office.

In July 2001, President Alejandro Toledo assumed the presidency following a peaceful transfer of power through generally free and fair national elections held in April and June 2001. Voting was by secret ballot and mandatory for citizens between the ages of 18 and 70; however, members of the armed forces and the police, as well as felons, were ineligible to vote. The law bars groups that advocate the violent overthrow of the Government from participating in the political process.

In 2000, the 120-member Congress approved the creation of multiple district representation for electing members to Congress, which was designed to provide better geographic representation. At year's end, the party breakdown in Congress was Peru Posible, 41 seats; APRA, 28 seats; Independent Moralizing Front (FIM), 10 seats; We are Peru/Popular Action/Union for Peru, 10 seats; Democratic Independent Group, 7 seats; Peru Now, 6 seats; unaffiliated, 4 seats; in addition, two members had been suspended. The length of a term in Congress is 5 years. The legislature functioned independently from the executive.

The Constitution establishes three bodies to administer elections: The National Board of Elections (JNE); the National Office of Electoral Processes (ONPE); and the National Registry of Identification and Civil Affairs (RENIEC). The JNE sets the legal parameters and rules on election-related disputes and challenges. The ONPE administers elections and the RENIEC issues election identity documents.

In 2001, the Judicial Branch reopened the investigation into the falsification of over 1 million voter signatures that occurred during the 2000 elections. The authorities brought charges against Jose Portillo, former chief of ONPE, for election fraud in relation to the falsified signatures. Portillo remained under house arrest, and an investigation was underway at year's end.

The 2001 modified election law established that the percentage of signatures required for the registration of a new political party was 1 percent of the voters who participated in the past election. The law prohibits reelection of a president.

In 2002, Congress voted to suspend Congresswoman Martha Chavez following allegations of corruption. She was a member of Fujimori's Cambio 90 party. Although not removed from Congress, Chavez was barred from participation in congressional activities. Her immunity from judicial proceedings was lifted as a result of the vote, and a trial was pending at year's end.

Women and some minorities participated actively in government and politics. A 2000 law states that at least 30 percent of each party's ballot for congressional elections, and at least 25 percent of candidates for municipal elections, must be from each sex. There were 21 women in the 120-member Congress. At year's end, there was one woman serving in the Cabinet, the Attorney General was a woman, and there was one woman on the Supreme Court.

Traditionally, an elite minority of European descent held most leadership positions in government. President Toledo was the country's first elected president of mixed Caucasian and indigenous ancestry. It was rare for indigenous persons, who make up more than one-third of the population, to hold high public office. Congress had one self-declared indigenous member: Paulina Arpasi of the Peru Posible party.

The Afro-Peruvian minority, unofficially estimated to be 3 to 5 percent of the total population, was not represented in the leadership of the executive branch of government.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Government permitted numerous NGOs dedicated to monitoring and advancing human rights to operate freely; unlike in previous years, these groups reported no harassment or other attempts by the authorities to hinder their operations.

Most human rights NGOs were independent and generally objective. The National Coordinator for Human Rights (Coordinadora) was an umbrella organization for more than 60 human rights NGOs. The Coordinadora sought to avoid politicizing its positions on human rights issues, although its constituent members could do so in their own names. A number of other human rights groups associated with the Catholic Church or with government

institutions operated independently or on the margins of the Coordinadora.

The human rights community reported that the Toledo administration continued to work toward strengthening government-civil society relations. Toledo named former human rights advocate Gino Costa as Minister of Interior in July 2002. Several other high level officials at the Ministry of Interior had strong human rights backgrounds. Unlike in previous years, government officials did not accuse NGOs of being overprotective of criminals and terrorists to the detriment of victims. There were some government complaints that the IACHR was overprotective of terrorists.

According to COMISEDH, military commanders did not grant access to military facilities to human rights observers. To obtain information about activities in those areas, NGOs had to work through the Ombudsman's office.

The Office of the Human Rights Ombudsman received funds from the Government and foreign governments and was considered an independent and effective institution. Congress votes to select the Ombudsman, who must receive at least a two-thirds majority of votes and serves a 5-year term. The Ombudsman's office had investigative independence and the ability to inform the public of its conclusions and recommendations. However, the office had no enforcement mechanism other than moral suasion. The Ombudsman's office issued reports throughout the year on a variety of issues and an annual report on the overall human rights situation.

During the year, the periodic special reports covered the following themes: human rights abuses during the state of emergency, the need to provide "morning after" pills in state health clinics to assure poor women access to family planning, the interest payments that citizens had to pay along with late electric bills, the difficult conditions in Challapalca prison, and the right of children conceived outside marriage to use their presumed father's last name when registering for school.

At year's end, there was an interim Ombudsman. While Congress remained unable to select a new permanent Ombudsman, the interim Ombudsman performed well, according to members of the human rights community. The Ombudsman's office actively investigated cases of alleged government abuse.



On August 28, the TRC made its final report to the Government. The report stated that approximately 69,000 persons--the majority of them ethnically Indian inhabitants of rural areas--had died during the political violence that shook the country from 1980 to 2000. The TRC said that social divisions and a history of exclusion had rendered the society vulnerable to a terrorist group like Sendero Luminoso, which it said bore overwhelming responsibility for the armed conflict of 1980-2000. The TRC found that Sendero had carried out the majority of political killings that took place during this period.

At the same time, the TRC criticized the administrations of Fernando Belaunde and Alan Garcia for their failure to exercise political control over the military. Further, it said that the military initially adopted a costly and ineffective "scorched earth" counterinsurgency campaign against Sendero that produced significant human rights abuses. The TRC distinguished, however, between the systematic abuses of human rights carried out by Sendero--abuses that were part and parcel with the group's extremist ideology--and the violations of military norms practiced by some individual military commanders. The TRC also criticized the Fujimori government for organizing military death squads (such as the Colina group) and directing them to kill both MRTA and Sendero Luminoso terrorists.

The TRC pushed the Government to reopen investigations into key legal cases, most notably the operations to free hostages at the Japanese Ambassador's residence and the case of the massacre at El Fronton prison in 1986. The TRC turned over to the Public Ministry the names of those it believed committed prosecutable human rights violations. At year's end, the Public Ministry was investigating these cases for possible prosecution. Finally, the TRC urged the Government to adopt policies of "reconciliation" that would help heal the social and cultural divides--between rich and poor, between more ethnically European and more ethnically indigenous citizens--that had rendered the country vulnerable to a group like Sendero Luminoso.

On November 21, President Toledo outlined a series of government programs to aid regions most affected by the 1980-2000 violence and to help victims, as part of a "Peace and Development Plan." The President also offered a series of benefits to victims of the violence, including indigenous persons, military and police, and their families in the form of educational support,

psychological counseling, and free housing. Victims would register to receive this support. Toledo did not, however, offer individual financial reparations, as the TRC had advocated.

#### Section 5 Discrimination Based On Race, Sex, Disability, Language, Or Social Status

The Constitution provides for equal rights for all citizens and specifically prohibits discrimination based on ethnic origin, race, sex, language, opinion, or economic condition. However, discrimination against women, persons with disabilities, indigenous people, and racial and ethnic minorities persisted, although progress was made in a number of areas.

On April 22, the Front for the Right to be Different, a gay rights group, began a campaign to amend the Constitution so that it would forbid discrimination against people for their sexual orientation. Homosexuals faced strong discrimination, and most preferred to remain anonymous for fear of social sanctions from their families and by society in general.

#### Women

Violence against women, including rape, spousal abuse, and sexual, physical, and mental abuse of women and girls was a chronic problem. Such abuses were aggravated by insensitivity on the part of law enforcement and judicial authorities toward the female victims. A National Institute of Statistics and Information (INEI) survey reported that during 2000, 34 percent of women were battered by their partner, and that 19 percent of those women were battered frequently. The survey reported that close to 43 percent of poor women were battered.

The Ministry of Women and Social Development (MIMDES) and NGOs stated that many domestic abuse cases were never reported. Although official figures for the number of arrests and convictions in abuse cases were unavailable, NGO sources contended that the majority of reported cases did not result in formal charges due to fear of retaliation from the accused spouse, or because of the cost involved in pursuing a complaint. In addition, legal and physical protection was limited by delays in legal processes, ambiguities in the law, and lack of alternative shelter and income for victims.

The domestic violence law gives judges and prosecutors the authority to prevent the convicted spouse or parent from returning to the family's home; authorizes the victim's relatives and unrelated persons living in the home to file complaints of domestic violence; and allows any health professional to certify injuries. In 2000, Human Rights Watch called on the Government to improve legislation on domestic violence by eliminating mandatory reconciliation sessions between victims and abusers, and by providing law enforcement and social service providers with training to improve their sensitivity to victims' needs. In 2001, Congress approved a law that states that reconciliation sessions between the abuser and victim are not required in cases of domestic violence. A 2000 law expanded the definition of domestic violence to include sexual violence, and to include all intimate partners whether or not the victim and perpetrator had ever lived together.

MIMDES ran the Women's Emergency Program, which focused on the legal, psychological, and medical problems facing women and children who were victims of domestic violence. Aid is provided free of charge. At year's end, MIMDES operated 38 centers staffed by both women and men, bringing together representatives of various government institutions--police, prosecutors, counselors, and public welfare agents--charged with helping victims of domestic violence. These centers had assisted 28,048 victims (including men as well as women) by year's end. The monthly average of reported abuse cases was approximately 2,500. MIMDES continued its public education campaign to sensitize government employees and the public to domestic violence. With NGO assistance, MIMDES educated police about domestic violence and trained officers in all police stations as to how to process domestic violence cases. The Ombudsman's office continued to complain that officers reacted indifferently to charges of domestic violence, even though the law requires all police stations to receive such complaints.

According to the Ombudsman, many rape victims complained that court-appointed medical examiners inappropriately delved into their sexual histories. The victims accused judges of looking more favorably on rape victims who were virgins prior to the rape and of believing that a woman who was raped must have enticed her attacker. Many victims were afraid to personally file a complaint of sexual abuse, particularly in cases where the perpetrators were police officers.

Prostitution is legal for women over 18 years of age, but the law prohibits and sanctions activities of those who would obtain benefits from prostitution, such as pimps.

Sexual harassment was a problem, according to the Ombudsman's office. The law against sexual harassment does not provide for sanctions or sentencing but does give victims of sexual abuse the right to abandon their job and subsequently sue their abuser. Women's rights advocates contended that the law was completely ineffective, noting that it had never been applied in court. In October 2002, the Congressional Commission for Women and Social Development approved a bill that would prohibit sexual harassment in the public sector (military, police, etc.) and punish the offense. On February 27, Congress passed the Law for the Prevention and Punishment of Sexual Harassment, and on November 26, its regulations were published in official daily *El Peruano*.

The Constitution provides for equality between men and women, and 95 amendments to the Employment Promotion Law, as well as other laws relative to marriage, divorce, and property rights, prohibit discrimination against women. Racial and sexual discrimination in employment advertisements or announcements of educational opportunities were prohibited; however, they continued to occur in practice. The law prohibits the arbitrary firing of pregnant women. In December, the Congressional Commission on Justice and Human Rights began work on a Law of Equal Opportunity that would provide further protections for the rights of women.

Traditional assumptions and misconceptions often impeded access by women to leadership roles in both the public and private sectors. Women primarily from the upper and upper-middle classes advanced in recent years into leadership roles in various companies and government agencies. Due to societal prejudice and discrimination, women historically suffered disproportionately from the country's pervasive poverty and unemployment.

### Children

The Government provides free, compulsory education through secondary school. Education was generally available throughout the country, but there was a shortage of qualified teachers, primarily in jungle regions. Fees for uniforms and books posed

problems for poor families. Largely because of widespread poverty, approximately one-third of all school-age children and adolescents worked during daytime hours rather than attend school. Approximately 6 percent of children between the ages of 6 and 12, and 17 percent of adolescents between the ages of 12 and 17, either never attended school or abandoned their education. School nonattendance was highest in rural and jungle areas and affected girls more than boys. Pregnant school-age girls had the right to begin or continue attending school.

According to government figures, more than 90 percent of children were enrolled in primary school in Lima and more than 80 percent in secondary school. Approximately half of the students who went to primary school continued on to complete high school. In some remote areas of the country, fewer than 60 percent of children attend school.

An INEI survey conducted during the year estimated that nearly 60 percent of the country's 10 million children under 18 years of age lived in poverty; of them, approximately 20 percent lived in extreme poverty. Approximately 25 percent of children under age 5 were malnourished. The infant mortality rate was 33 per 1,000 in the year 2000 and 34.1 for 2002. According to INEI, approximately 76 percent of children not living in poverty attended school through the high-school level, whereas only 51 percent of children living in poverty reached high school. Children living in poverty averaged only 7.8 years of education compared to 9.4 years for children living above the poverty line. Only 1.2 percent of children living in extreme poverty attained university-level education, compared with 15.4 percent of children who lived above the poverty line.

MIMDES's Children's Bureau coordinated child and adolescent related government policies and programs. At the grassroots level, 1,312 Children's Rights and Welfare Protection Offices received and resolved complaints ranging from physical and sexual abuse to child support, abandonment, and undetermined guardianship. Provincial or district governments operated approximately 46 percent of these offices, while schools, churches, and NGOs ran the remaining 54 percent. Law students staffed most of the units; only the offices in the wealthiest districts of the country had professionally trained lawyers, psychologists, and social workers. When these offices could not resolve cases, officials typically referred them to the local prosecutors' offices of the Public Ministry. Settlements

adjudicated by these offices were binding legally and had the same force as judgments entered by a court of law.

Violence against children and the sexual abuse of children were serious problems. In 2000, the Municipal Ombudsman's Office for Children and Adolescents for Lima and Callao documented 586 sexual assaults against children 5 years of age and under; 2,937 against children aged 6 to 12; and 5,935 against children aged 13 to 17.

The report confirmed that 70 percent of the assaults occurred in the home by a relative or someone known to the victim and the victim's family. According to NGOs, many abuse cases were never reported to the authorities, since many persons believed that such problems belonged within the family and should be resolved privately. In December, the Minister of Education announced that he was separating 180 teachers from their jobs for sexual harassment of students over the last 3 years. This arose largely as the result of the demands of parents who had protested outside certain schools. The Women's Emergency Program also worked to address the problems facing children who were victims of violence.

The law prohibits sexual abuse of minors, and police enforced such laws; however, there continued to be reports of child prostitution. In May, in Trujillo, a couple was arrested for filming children for the purposes of exporting sex videos to Europe. In October, a young woman was rescued from a clandestine brothel in Trujillo, a highly publicized case that focused public attention on underage prostitution and trafficking in persons (Section 6.f.).

Child labor was a serious problem (see Section 6.d.).

The National Initiative on the Rights of the Child was the largest NGO of its kind and coordinated the work of 27 groups concerned with the problems of children throughout the country.

#### Persons with Disabilities

The Constitution provides that persons with disabilities have "the right to have their dignity respected and to be provided by law with protection, care, rehabilitation, and security." Legislation that established the National Council for the Integration of People with Disabilities (CONADIS) specifies

rights, allowances, programs, and services. The law prohibits discrimination, mandates that public spaces be barrier-free and that buildings be architecturally accessible, and provides for the appointment of a disability rights specialist in the Human Rights Ombudsman's office.

In March, the Government initiated a campaign whereby the disabled could register themselves and receive benefits, including merit points for obtaining government contracts, price breaks for cultural activities, and exonerations from certain taxes. The Government also announced the formation of the Biomechanical Aid Bank, a mechanism for helping the disabled who were poor to afford wheelchairs and other compensatory devices to improve their mobility. While the campaign was well intentioned and did focus more attention on the disabled, in overall practice, the Government devoted little attention and resources to persons with disabilities. Many such individuals remained economically and socially marginalized. Many poor persons with disabilities in Lima lived by begging in the streets.

The 1993 census counted 288,526 persons with disabilities, or 1.3 percent of the population; however, in 2001, the Ministry of Health and the Pan American Health Organization estimated that the actual number of persons with disabilities could be as high as 3 million, or 13.8 percent of the population. CONADIS estimated that between 10 and 13 percent of the population was disabled.

Although the law prohibits discrimination in the workplace, it is vague regarding the source of funds to pay for the human assistance, technological support, and environmental adaptations that often are necessary to enable workers with disabilities to be productive. As a result, persons with disabilities and the private agencies serving them generally relied on public charity and on funding from international organizations.

Although construction regulations mandate barrier-free access by persons with physical disabilities to public service buildings, little effort was made to implement this provision. There were no accommodations, such as interpreters for the deaf in government service offices and Braille or recorded versions of the Constitution, which would facilitate the participation of persons with disabilities in the basic processes of democracy and citizenship.

During the year, the MIMDES completed a study of access issues for persons with disabilities in 235 public buildings in Lima and Callao. The MIMDES study found that, while some buildings had ramps, bathrooms and other features were "a torture" for those with disabilities. On October 23, MIMDES, in conjunction with Federico Villareal University and the Ministry of Housing, opened a campaign called "Friendly Structures" that was dedicated to finding resources to improve this situation.

According to officials of the Institute for Social Security, less than 1 percent of persons with severe disabilities actually worked. Among those who did, many were channeled into occupations traditionally assumed to be "suitable" for persons with disabilities, such as telephone switchboard operation and massage, in the case of the blind. Some private companies initiated programs to hire and train persons with disabilities, and a private foundation provided small loans to persons with disabilities to start up businesses. Nevertheless, such persons faced discrimination by potential employers.

#### Indigenous People

The Constitution prohibits discrimination based on race and provides for the right of all citizens to speak their native language; however, the large population of indigenous persons faced pervasive societal discrimination and social prejudice. Many factors impeded their ability to participate in, and facilitated their deliberate exclusion from, decision making directly affecting their lands, culture, traditions, and the allocation of natural resources. According to indigenous rights groups, the 1993 Constitution and subsequent implementing legislation are less explicit about the inalienability and non-marketability of native lands than earlier legislation. Pervasive discrimination and social prejudice intensified feelings of inferiority and second-class citizenship. Many indigenous persons lacked basic documents such as a birth certificate or a voter's registration card that normally would identify them as full citizens and enable them to play an active part in society.

Other factors also contributed to the marginalization of indigenous people in society. Poor transportation, language barriers, and inadequate communications infrastructure in the highlands and in the Amazon jungle region made political



mobilization and organization difficult. The geographic isolation of much of the indigenous population and the centralization of government in Lima further limited the access and participation of indigenous people in society. Indigenous rights groups also complained that indigenous persons in rural areas did not have adequate access to public services, particularly health and education.

The native population of the Amazon region, estimated at between 200,000 and 300,000 persons, faced pervasive discrimination and social prejudice. In accordance with local culture and traditions, most of the native communities have a spiritual relationship with their land, and the concept of land as a marketable commodity is alien to them. Nevertheless, according to the director of the Human Rights Ombudsman's Native Communities Program, the only right still statutorily set aside for this native population with respect to its land is that of "unassignability," which prevents the title to such lands from being reassigned to some nonindigenous tenant by right of tenure. However, the marketing and sale of the lands are no longer prohibited.

Indigenous groups continued to resist encroachment on their native lands by oil exploration and drilling interests. Many indigenous persons did not have title to the land on which they lived. For those who did, title to land does not include mineral or other subsoil rights, which belong to the State; this problem led to conflicts between mining interests and indigenous communities. Indigenous groups asserted that such encroachment often can damage the environment and negatively affect the health of the native people.

Persons of indigenous descent who live in the Andean highlands speak Aymara and Quechua, recognized as official languages. They are ethnically distinct from the diverse indigenous groups that live on the eastern side of the Andes and in the tropical lowlands adjacent to the Amazon basin.

The Government established a National Commission on the Amazon Region and Indigenous and Afro-Peruvian Affairs in October 2001. It is assigned to the office of the president of the Council of Ministers. The Commission had among its members officials from a variety of relevant ministries as well as representatives of the indigenous peasant population in the highland and coastal areas, the native population of the Amazon jungle, and the Afro-

Peruvian community. Congress also had its own Committee on the Amazon Region and Indigenous and Afro-Peruvian Affairs that was designed to address the needs of the indigenous communities.

The two principal NGOs that represented the interests of the native population of the Amazon region were the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSEP) and the Confederation of Amazonian Nationalities of Peru (CONAP). Both organizations joined the Permanent Conference of Indigenous Peoples, an umbrella body that coordinated the activities of the country's indigenous population. CONAP believed that mining and other development operations were inevitable and, therefore, wanted native communities to share the benefits. AIDSEP opposed territorial encroachments. Both AIDSEP and CONAP were critical of the 1995 land law, which permits Amazonian land to be bought and sold if no one is living on it or otherwise making use of it.

Sendero Luminoso continued to be a leading violator of the rights of indigenous people. The terrorist group coerced indigenous peasants into joining its ranks and demanded war taxes. In December 2002, the Government announced that the police would attempt to rescue the members of at least 200 families, primarily from the Ashaninka indigenous group, who were believed to be held captive by Sendero Luminoso forces in the central jungle areas of Junin and Ayacucho. During the year, police rescued approximately 40 of these families--over 70 persons--from enslavement by Sendero. On September 10, the police freed 24 Ashaninka Indians near Satipo, in Junin Department.

#### National/Racial/Ethnic Minorities

The law criminalizes racial discrimination, with penalties varying from 30 to 60 days of community service. For public officials, the sentence is between 60 and 120 days of community service; violators also were disqualified from holding public office for 3 years. The country's population included several racial minorities, the largest of which were persons of Asian and African descent. Afro-Peruvians, who tended to be concentrated along the coast, often faced discrimination and social prejudice, and they were among the poorest groups in the country.

Afro-Peruvians generally did not hold leadership positions in government, business, or the military; however, there were three Afro-Peruvian members of Congress. Both the navy and the air force were believed widely to follow unstated policies that exclude blacks from the officer corps. The law prohibits newspaper employment advertisements from specifying the race of the candidates sought, but employers often found discreet ways to relegate blacks to low-paying service jobs. The law prohibits various forms of discrimination by retail establishments against prospective customers. However, the law has not deterred discriminatory practices. Afro-Peruvians were often portrayed unflatteringly by the entertainment industry as individuals of questionable character.

Although citizens of Asian descent historically suffered discrimination, their social standing improved in recent years. Many persons of Asian descent held leadership positions in business and government.

## Section 6 Worker Rights

### a. The Right of Association

The Constitution and the law provide for the right of association; however, worker rights advocates claimed that the laws were overly restrictive. Approximately 5 percent of the formal sector workforce of 8.49 million belonged to organized labor unions. There were approximately 13 million economically active persons in the country, but only about half of those had permanent, full-time employment.

Labor regulations provide that workers may form unions on the basis of their occupation, employer affiliation, or geographic territory. Workers were not required to seek authorization prior to forming a trade union, nor could employers legally condition employment on union membership or non-membership. In the past, labor advocates asserted that laws promulgated by the Fujimori administration in 1992, as well as provisions included in the 1993 Constitution, failed to protect the rights of workers to form unions. Labor advocates claimed that many workers were reluctant to organize due to fear of dismissal. In December 2002, Congress passed a law that addressed some of the International Labor Organization's (ILO) primary objections to the 1992 labor law. The reformed labor law allows apprentices to join unions, reduces the number of individuals required to

form a union, recognizes the right to strike, and allows for collective bargaining by sector.

Unions represented a cross section of political opinion. Although some unions traditionally were associated with political groups, the law prohibits unions from engaging in explicitly political, religious, or profit-making activities. Union leaders who ran for Congress in the 2001 elections did so without official union sponsorship. Nevertheless, some union activists who ran for public office received unofficial backing from their unions.

The labor law passed in December 2002 addressed some of the ILO's objections to former legislation on collective bargaining. Unions complained that the Employment Promotion Act had eliminated the right of dismissed workers to compulsory reinstatement if they proved that employers had dismissed them unjustly. In practice, companies sometimes offered financial compensation instead of reinstatement as the legislation allows. Although the Employment Promotion Act had prohibited companies from firing workers solely for involvement in union activities, this provision had not been enforced rigidly.

On November 3, the Government announced regulations for the Law for Domestic Workers, passed 5 months previously. This law applies to a large, overwhelmingly female population (estimates of the number of domestics ranged as high as 2 million) that worked in childcare and housekeeping. In the vast majority of cases, domestics lived with the families for whom they worked. The new law regulates the hours of domestic workers (48 hours per week for adults, 36 hours per week for workers age 15-17 and 24 hours per week for minors age 12-14), provides them the right to a contract (which can be either written or verbal), assures them participation in the national health plan, and provides minors working as domestics the right to attend school, among other benefits. However, the Ministry of Labor's limited ability to inspect the conditions of domestic workers on this large, informal sector is likely to reduce the law's effect.

On December 23, President Toledo issued an executive decree that provided restitution or compensation to 10,251 state workers dismissed as the result of various privatizations of state enterprises during the Fujimori years. This was the third and final in a series of three such announcements. The awards were expected to benefit a total of 28,000 former government

employees. Benefits vary from case to case. Some workers will get their old jobs back, some will receive retirement, and others will be moved to new jobs or be entitled to retraining. The estimated cost of the proposal was \$60 million (210 million soles). Funds for the project still need to be appropriated, although it was thought that some funding may come from moneys recuperated in anti-corruption cases.

There were no restrictions on the affiliation of labor unions with international bodies. Several major unions and labor confederations belonged to international labor organizations, the international trade secretariats, and regional bodies.

b. The Right to Organize and Bargain Collectively

The Constitution recognizes the right of public and private sector workers to organize and bargain collectively; however, it specifies that this right must be exercised in harmony with broader social objectives. Labor regulations provide that workers may form unions on the basis of their occupation, employer affiliation, or geographic territory. The law does not prohibit temporary employees from joining a union, but they may not join the same union as permanent workers.

Union officials must be active members of their union, but the number of individuals each union may designate as "official" is limited, as is the amount of company time they may devote to union business. There were no legal restrictions that prevented unions from negotiating for higher levels of worker protection than the baseline standards provided for by law. There was no legal protection against employer interference in trade unions.

A union had to represent at least 20 workers to become an official collective bargaining agent. Representatives could participate in collective bargaining negotiations and establish negotiating timetables. Management negotiating teams could not exceed the size of union teams, and both sides were permitted to have attorneys and technical experts present as advisers.

Labor regulations permit companies unilaterally to propose temporary changes in work schedules, conditions, and wages, and to suspend collective bargaining agreements for up to 90 days, if obliged to do so by worsening economic circumstances or other unexpected negative developments, provided that they give their employees at least 15 days' notice of such changes. However,

worker rights advocates alleged that, in practice, few employers respected this provision. If workers rejected an employer's proposed changes, the Ministry of Labor was required to resolve the dispute based on criteria of "reasonableness" and "economic necessity." Whether the changes proposed by employers in such instances were upheld in full or in part, employers were required to adopt all possible measures, such as the authorization of extra vacation time, in order to minimize the negative economic impact on their employees.

Although a conciliation and arbitration system exists, union officials complained that their proportionate share of the costs of arbitration often exceeded their resources. In addition, union officials claimed that, as the law prohibits temporary workers from participating in the same union as permanent workers, companies have resorted to hiring workers "temporarily" to prevent increases in the number of union members. To address this concern, Congress passed a law in 2001 that restricts the number of temporary workers hired to 20 percent of a company's work force. Some labor advocates continued to claim that some companies did not comply with the law. Employers denied that they were biased against unions, and argued that the labor stability provisions of the legislation made long-term commitments to workers too expensive.

The labor law passed in December 2002 addressed some of the ILO's objections to the 1992 labor law concerning the right to strike, including a requirement that a majority of workers in an enterprise, regardless of union membership, must vote in favor of any strike.

There were numerous labor strikes, demonstrations, and work stoppages during the year. During May and June, a strike by the Teacher's Union (SUTEP) and agricultural workers paralyzed activity in several districts of the country and caused President Toledo to declare a state of emergency. After 7 weeks and some clashes between protesters and police, both groups returned to work. The teachers received the promise of a pay increase that raised the average teacher's salary from \$200 to \$214 (700 to 750 soles) per month. Both groups attempted to strike again in September, when the Government was slow to deliver on its promises to the teachers. The teachers got their wage increase, although the Minister of Agriculture rejected the demands of the agricultural workers.

In September, civil construction unions also went on strike, demanding the right to bargain with the Chamber of Construction Companies collectively, a principle recognized by both the Ministry of Labor and the Supreme Court. During the Fujimori era, construction companies had bargained with union leaders by project and not by activity. The construction unions won a modest increase in salary and, more importantly, the right to industry-wide collective bargaining.

The law restricts unions that represent workers in public services deemed essential by the Government from striking.

There are four export processing zones (EPZs). Special regulations aimed at giving employers in EPZs and duty free zones a freer hand in the application of the law provide for the use of temporary labor as needed, for greater flexibility in labor contracts, and for setting wage rates based on supply and demand. As a result, workers in such zones had difficulty unionizing. Worker rights advocates acknowledged that these few zones did not contribute substantively to labor's unionizing difficulties.

#### c. Prohibition of Forced or Bonded Labor

The Constitution prohibits forced or bonded labor, including by children, and there were no reports of forced labor during the year. Forced labor previously was found in the gold mining industry in the Madre de Dios area; however, the changing nature of the industry and government efforts to regulate it have helped to address the problem. NGO sources and the ILO reported in 1999 that mechanization largely had replaced manual labor, and the Ministry of Labor inspection programs helped deter illegal child labor in this industry.

Sendero Luminoso held indigenous families captive in remote areas, using their labor, including that of children, to grow food crops and coca (see Section 5).

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Child and Adolescent Code of 1992 governs child and adolescent labor practices and restricts child labor based upon the age of the child, hours worked, and occupation; however, child labor was a serious problem. The legal minimum age for

employment is 14; however, children between the ages of 12 and 14 may work in certain jobs if they obtain special permission from the Ministry of Labor and certify that they also are attending school. In certain sectors of the economy, higher minimums are in force: age 14 in agricultural work; age 15 in industrial, commercial, or mining work; and age 16 in the fishing industry. At year's end, the Ministry had granted 1,020 permits to children between the ages of 12 and 17 to work in compliance with labor and education laws. The Ministry granted 1,142 such permits in 2002 and 1,175 in 2001. The law prohibits children from engaging in certain types of employment, such as work underground, work that involves the lifting and carrying of heavy weights, work where the child or adolescent is responsible for the safety of others; night work; or any work that jeopardizes the health of children and adolescents, puts at risk their physical, mental, and emotional development, or prevents their regular attendance at school. As many as 1.9 million children worked primarily in the informal sector to help support their families. Of this total, NGOs estimated that approximately 600,000 children were under the age of 12.

Human rights and labor rights groups criticized the modification of the Child and Adolescent Code, passed in August 2000, that maintained the minimum age for work at 12 years old (with government permission), and argued that it contradicts international guidelines on the minimum age of child workers.

Many children were pressed to help support their families from a very early age by working in the informal economy, where the Government did not supervise wages or working conditions. Other children and adolescents worked either in formally established enterprises or as unpaid workers at home.

The search for work frequently put children on the move. Significant numbers of children from rural areas, most of them female, often were moved to cities where they lived and worked in families as domestics. Although their hours were supposed to be limited (children age 12-14 work 4 hours a day, 24 hours a week, and adolescents age 15-17 work 6 hours a day, 36 hours a week) and their right to attend school ensured, in practice there was no method for assuring that such regulations are followed. Employers frequently extracted far longer hours from their live-in charges, compelling them to carry out comprehensive duties, including cooking and childcare, for wages as low as \$20-30 (70-105 soles) per month.



NGOs and other observers also maintained that the country suffered a growing problem with adolescent prostitution (see Section 5). There was not a reliable statistical base to determine the extent of adolescent prostitution, but some informed observers believed the problem was growing worse, and recent police raids on clandestine brothels demonstrated the presence of adolescent sex workers.

Adolescents must be authorized to work and must be registered unless they are employed as domestic workers or as unpaid family workers. Adolescent employment must be remunerated in accordance with the principle of equal pay for equal work. In practice, the Child and Adolescent Code provisions were violated routinely in the informal sector. Child and adolescent laborers worked long hours in the agricultural sector. Other children reportedly were employed at times in dangerous occupations or in high-risk environments, such as informal gold mining, garbage collection, loading and unloading produce in markets, brick making, coca cultivation, or work in stone quarries and fireworks factories, among others. Some child and adolescent labor tended to be seasonal.

Firms found guilty of violating child labor laws can be fined and have their operations suspended. The Ministry of Labor's inspectors had legal authority to investigate reports of illegal child labor practices. Inspectors conducted routine visits without notice to areas where child labor problems were reported. Inspectors maintained contact with a wide variety of local NGOs, church officials, law enforcement officials, and school officials. The Ministry reported that there were a total of 170 labor inspectors, of which 120 worked in Lima. These inspectors conducted all labor inspections, both for adults and children. Labor inspections were primarily conducted in the formal sector. The National Police and local prosecutors exercised law enforcement authority.

e. Acceptable Conditions of Work

The Constitution provides that the State promote social and economic progress and occupational education. It states that workers should receive a "just and sufficient" wage to be determined by the Government in consultation with labor and business representatives, as well as "adequate protection against arbitrary dismissal." In September, the Government

raised the statutory minimum wage from \$117 (410 soles) a month to \$132 (460 soles), which was not considered sufficient to provide a decent standard of living for a worker and family. The Government estimated the poverty line to be approximately \$45 (157 soles) a month per person. However, this figure varied from region to region. Actual figures from INEI's 2001 survey showed the poverty line for Lima at \$75 (260 soles) a month per person, compared to \$43 (147 soles) for the rural jungle. According to some estimates, as much as half the work force earned the minimum wage or below, because such a great proportion worked in the informal sector, which was largely unregulated. The Ministry of Labor was responsible for enforcing the minimum wage.

A 2001 law increased the Labor Ministry's ability to enforce compliance with laws requiring businesses to pay social security and other benefits.

The Constitution provides for a 48-hour workweek, a weekly day of rest, and an annual vacation. In addition, it prohibits discrimination in the workplace, although discrimination continued to be a problem in practice. A Supreme Decree states that all workers should work no more than 8 hours per day; however, labor advocates complained in recent years that workers were pressured to work longer hours to avoid dismissal. A February 2002 law requires companies to pay overtime to employees who work more than 8 hours, to provide additional compensation for work at night, and to provide a 45-minute meal break to employees during their 8-hour shift. Labor, business, and the Government reported that the majority of companies in the formal sector were complying with the new law.

While occupational health and safety standards exist, the Government lacked the resources to monitor firms or enforce compliance. Labor advocates continued to argue that the Government dedicated insufficient resources to enforce existing legislation. In 2001, the Minister of Labor announced that 80 percent of the companies inspected were found to be in compliance with labor laws. The compliance estimate remained consistent throughout the year. The Ministry of Labor continued to receive worker complaints and intervened in hundreds of cases. When firms were found to be in violation of the law, the Government sanctioned them with fines or, in some cases, closure. In cases of industrial accidents, the level of compensation awarded to the injured employee usually was

determined by agreement between the employer and the individual involved. The worker did not need to prove an employer's culpability in order to obtain compensation for work-related injuries. No provisions exist in law for workers to remove themselves from potentially dangerous work situations without jeopardizing their continued employment.

f.     Trafficking in Persons

Various laws prohibit trafficking in persons; however, trafficking in persons was a problem.

The law prohibits trafficking in persons and alien smuggling, which is defined as promoting, executing, or assisting in the illegal entry or exit of persons from the country. Laws prohibiting kidnapping, sexual abuse of minors, and illegal employment were enforced and could also be used to sanction traffickers in persons. There were no government programs to educate vulnerable groups about the dangers of trafficking or to assist victims. The International Organization for Migration worked with Movimiento El Pozo, an NGO dedicated to helping prostitutes, to use a \$115,000 grant to produce a rigorous, scientific study of trafficking in the country.

According to immigration authorities, there were no cases of international trafficking of persons during the year. The Missing Persons Division of the PNP reported that it had one case of sex trafficking of adolescent girls during the year. Authorities asserted that organized trafficking did not, to their knowledge, occur.

In contrast, NGOs and international organizations maintained that significant domestic trafficking occurred, particularly to bring young women from the Amazon district or the Sierras into the cities or into mining areas to work as prostitutes. This trafficking did not operate through formal criminal networks, but instead took place through informal networks that could involve boyfriends and even the families of the young women who were its victims.

NGOs and various elements of the Government undertook efforts to address this problem during the year. The Ministry of the Interior signed an agreement with the Foundation for Missing Peruvians, making that organization the official registry for missing persons in the country. In August, police formed a

special unit called "The Green Squad" to respond to citizen complaints. Working together, police and the Foundation for Mission Peruvians carried out a series of raids against clandestine brothels in the fall, including, in October, the rescue of an underage young woman from an illegal brothel in Trujillo.